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BOUSTEAD ESTATES AGENCY SDN BHD

v.

PENTADBIR TANAH, BALING, KEDAH

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COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
ZULKEFLI MAKINUDIN JCA
ZAINUN ALI JCA
[CIVIL APPEAL NO: K-01-38-1998]

C

4 JUNE 2007

LAND LAW: *Acquisition of land - Compensation - Oil palm estate - Land severed into two upon acquisition and construction of highway - Damage suffered by owner - Whether State Government liable for*

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severance and injurious affection - Land Acquisition Act 1960, s. 36(1) - Road Transport Act 1987, s. 85(1)

In this case, part of the applicant's oil palm estate was acquired by the State Government of Kedah pursuant to the Land

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Acquisition Act 1960 for the purpose of building a highway thereon. The acquisition cut the estate into two portions such that the estate was no longer a compact landmass it used to be. The applicant accepted the compensation of RM16,000 per acre made in respect of the acquisition, but argued that it was also entitled

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to a separate award for severance and injurious affection caused to the land. Before the learned judge, evidence was led that the area of land affected by the division was approximately 364.26 acres and that there was a 30% depreciation in the market value of the applicant's land as a result of the acquisition and severance. The learned judge, however, took the view that the severance had

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not resulted in the remaining portion of the land to become unproductive, and that the construction of the highway would rather enhance the value of the land, and in the circumstances disallowed the claim. The applicant appealed and the issue was whether the applicant was on the facts and in the circumstances

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entitled to the extra compensation sought for.

Held (allowing the appeal)
Per Zulkefli Makinudin JCA delivering the judgment of the court:

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(1) The learned judge erred in holding that there is an enhancement in value when there is no evidence of such enhancement. The land lots in question are a working palm oil

estate, and the building of a road or highway across the estate severing it into two and opening the area up to traffic cannot in any way enhance or better the value of the land. What it does, on the contrary, is to create problems with regard to access and transportation of material and harvest into and out of the land. (para 6)

(2) The applicant had been deprived of a direct access between the two severed portions of the land. The learned judge had made an erroneous finding when he stated that the remaining portion of the land lots possess a frontage that would allow access to the main road or highway that would be built across the acquired land. The law with regard to the construction of access to existing roads is stated in s. 85(1) of the Road Transport Act 1987 and it clearly prohibits the applicant from building access road to join the main road that would be built across the acquired land. We would in this respect agree with the applicant that it may even have to build fencing along the side of the severed portions of the land bordering the main road that would be built. (para 7)

(3) For the reasons stated, we would allow the appeal and vary the award made by the respondent to the extent that the award of compensation should further include an award for severance and injurious affection amounting to RM1,748,592 (RM16,000 x 30% x 364.29 acres). (para 8)

Bahasa Malaysia *translation of headnotes*

Dalam kes ini, sebahagian dari ladang kelapa sawit pemohon telah diambil oleh Kerajaan Negeri Kedah di bawah Akta Pengambilan Tanah 1960 untuk maksud pembinaan lebuhraya. Pengambilan tersebut telah memecah-pisah estet kepada dua bahagian sekaligus mengakhiri keadaan asalnya sebagai sebidang tanah yang tak berbelah-bagi. Pemohon menerima pampasan RM16,000 seekar yang diberikan, namun berhujah bahawa ia berhak kepada award berasingan kerana pecah-pisah dan kerosakan atau kecederaan kepada tanah. Di hadapan yang arif hakim, keterangan dikemukakan bahawa kawasan tanah yang terjejas oleh pecah-pisah adalah lebih kurang 364.29 ekar dan terdapat 30% penurunan pada nilai pasaran tanah pemohon akibat dari pengambilan dan pecah-pisah. Yang arif hakim bagaimanapun berpendapat bahawa pecah-pisah tidak menyebabkan baki tanah yang tinggal menjadi

A tidak produktif, dan bahawa pembinaan lebuhraya sebenarnya akan menaikkan lagi nilai tanah, dan atas alasan itu menolak tuntutan. Pemohon merayu dan persoalan yang berbangkit adalah sama ada pemohon dalam halkeadaan yang wujud berhak kepada pampasan tambahan yang dituntutnya.

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Diputuskan (membenarkan rayuan)
Oleh Zulkefli Makinudin HMR menyampaikan penghakiman mahkamah:

C **(1)** Yang arif hakim khilaf apabila merumuskan terdapat kenaikan pada nilai tanah kerana tidak ada keterangan mengenai kenaikan nilai tersebut. Lot-lot tanah berkenaan adalah sebuah ladang kelapa sawit yang sedang mengeluarkan hasil dan pembinaan jalan atau lebuhraya yang membelahnya kepada dua bahagian serta membukanya kepada lalulintas tidak akan D menaikkan nilainya. Apa yang berlaku, sebaliknya, adalah ia akan mencipta masaalah berkaitan dengan akses dan pengakutan dan keluar masuk material dan hasil ladang.

(2) Pemohon telah dinafikan akses terus kepada dua bahagian E tanah tersebut. Yang arif hakim telah membuat dapatan yang khilaf bilamana menyatakan bahawa baki lot-lot tanah yang tinggal telah memperoleh bahagian hadapan tanah yang akan memberi akses kepada jalan besar atau lebuhraya yang akan dibina menyeberangi tanah yang diambil. Undang-undang F berhubung pembinaan akses ke jalan-jalan sedia ada diperuntukkan oleh s. 85(1) Akta Pengangkutan Jalan 1987 dan ia jelas melarang pemohon dari membina jalan akses untuk disambung ke jalan utama yang akan dibina kelak. Dalam hubungan ini, kami bersetuju dengan pemohon bahawa ia G mungkin akan terpaksa membina pagar di sepanjang bahagian tanah yang dipecah-pisah yang bersempadan dengan jalan utama yang akan dibina.

(3) Atas sebab-sebab yang dinyatakan, kami membenarkan rayuan H dan mengubah award yang dibuat oleh responden dengan kadar bahawa award pampasan hendaklah juga mengandungi award kerana pecah-pisah dan kerosakan berjumlah RM1,748,592 (RM16,000 x 30% x 362.29 ekar).

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Legislation referred to:
Land Acquisition Act 1960, ss. 8, 36(1)
Road Transport Act 1987, s. 85(1)

For the appellant/applicant - Wong Choong Wah (Sharon Tan Geok Bee with him); M/s Skrine & Co
For the respondent - Dato' Zakiah Kassim, State Legal Adviser

[Appeal from High Court, Alor Setar; Land Review No: 15-09-1998]

Reported by WA Sharif

JUDGMENT

Zulkefli Makinudin JCA:

[1] This is an appeal by the applicant from the decision of the High Court at Alor Setar pursuant to a reference under s. 36(1) of the Land Acquisition Act 1960 ("the Act"). The learned judge of the High Court had dismissed the applicant's claim for damage sustained or likely to be sustained due to severance and/or injurious affection to the remainder of the land Lots No. 88 and 243, Mukim of Tawar, District of Baling, State of Kedah Darul Aman belonging to the applicant.

[2] The declaration of intended acquisition of the scheduled lands under s. 8 of the Act was published in the Government of Kedah Darul Aman Gazette on 8 December 1994 under Gazette Notification No. 760. The material date for the purposes of determining the market value is thus 8 December 1994. The purpose of the acquisition as stated in the said Gazette Notification is as follows:

> Tujuan Awam iaitu Cadangan Pengambilan Balik Tanah untuk Projek Jalan Raya Timur-Barat Fasa II Pakej V – Titi Karangan Ke Kampong Kangar, Negeri Kedah Darul Aman.

The particulars of the property scheduled for acquisition are as shown below:

Lot No.	Title	Original Area			Area to be acquired		
		Acre	Rood	Pole	Acre	Rood	Pole
88	G36807	210	1	35	6	1	24.32
243	G25100	418	2	32	3	0	36.00
		Total acquired area			9	2	20.32

The Scheduled Lands formed part of a large rubber and palm estate known as Stothard Estate which comprised 2,429.2895 acres.

[3] On 14 October 1997, the Land Administrator awarded the applicant the sum of RM51,600 for the acquisition on Lot 243 and RM102,432 for the acquisition on Lot 88 (equivalent to the sum of RM16,000 per acre), as well as a drainage cost of RM16,000. The total compensation should be RM170,032 for the scheduled lands. Payment was however made only for the award on Lot 88 and for drainage cost, amounting to RM118,432.

[4] The applicant referred the matter to the High Court for non-payment of the sum of RM51,600 due for the acquisition on Lot 243 and for failure by the Land Administrator to award severance and injurious affection for both Lots 88 and 243. On 18 May 1998, the learned judge of the High Court recorded the parties' consent for the payment of the sum of RM51,600 but dismissed the applicant's objection on the claim for severance and injurious affection for both Lots 88 and 243. The applicant is now appealing only on this claim for severance and injurious affection.

[5] At the outset we noted that the value of the land is not disputed. The respondent paid, and the applicant accepted the sum of RM16,000 per acre. It is not in dispute that the acquired land cuts the estate into two. The area of land affected by this division is approximately 364.29 acre. The dispute is whether the applicant should be compensated for the severance and injurious affection. The estimated depreciation of the market value is 30% and the applicant's claim for the severance and injurious affection for both Lots 88 and 243 is therefore for an amount of RM16,000 x 30% x 364.29 acres = RM1,748,592.

[6] The learned judge of the High Court in his grounds of judgment had stated that even though there is a severance taking place in respect of the said Lots 88 and 243, the severance in this case had not resulted in the remaining portion of the land lots becoming unproductive to be worked on or that there has been an injurious affection to the land. The learned judge took the view that the construction of the highway project across the two divided portions of the land would in fact facilitate the movement into and out of the said land and this would enhance the value of the land. With respect, we could not agree. The learned judge erred in holding there is an enhancement in value when there is no evidence of such enhancement. We find the land lots in question are a working palm oil estate, and the building of a road or highway across the estate severing it into two and opening the area up to traffic cannot in any way enhance or better the value of the land. What it does is to create problems with regard to access and transportation of materials and harvest into and out of the land. As a result of the acquisition the applicant's land can no longer be occupied as one compact holding. The severance has the consequence of making it more difficult and expensive to work the land. In the applicant's Valuation Report, it is stated that access to the severed portion of the estate is necessary to facilitate transportation. (See p. 54 of the appeal record).

[7] It has also to be stated here that there is no confirmation whatsoever that the respondent has agreed to provide an underpass or overpass between the two severed portions of the estate. If that is the case then the applicant would be deprived of a direct access between the said two severed portions of the land. The learned judge of the High Court in our view had made an erroneous finding when he stated that the remaining portion of the land lots possess a frontage that would allow access to the main road or highway that would be built across the acquired land. On this point we have to state the law with regard to the construction of access to existing roads. Section 85(1) of the Road Transport Act 1987 provides as follows:

(1) No person shall:

(a) Construct any access road (including paths, driveways or other means of access, whether public or private) to join any road.

A Based on the above provision of the law there is therefore no avenue for the applicant to have any means of access between the two severed portions of the land since no access road can be built to join the main road that would be built across the acquired land. We would agree with the contention of learned counsel for the
B applicant that there would even be a need for the applicant to construct fencing along the side of the severed portions of the land bordering the main road that would be built and this would cause additional expenses which have to be borne out by the applicant.

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[8] For the reasons already stated we would allow the appeal to the extent that the award made by the respondent is varied to include an award for severance and injurious affection for an amount of RM1,748,592 to be paid by the respondent to the
D applicant. There would be no order as to costs arising from this appeal. The deposit paid by the applicant is to be refunded to the applicant.

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